

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

_____ /

JOINT MOTION TO CONTINUE STAY DUE TO COVID-19

Plaintiff CSX Transportation, Inc. (“CSXT”), and Defendants Norfolk Southern Railway Company (“NS”), and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) (collectively, the “Parties”), by counsel, and pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, hereby jointly move this Court to continue the stay in this case until June 18, 2020, due to the impact of COVID-19 on the United States. The Parties also request a status conference with the Court on a mutually convenient date after June 18, 2020, to reset the trial date and corresponding dates. In support of this Motion, the Parties respectfully state:

1. On March 17, 2020, the Parties moved the Court to stay the case and vacate the pending deadlines, including trial, established by the Court’s Scheduling Order of October 25, 2019. *See* ECF Nos. 157, 78.

2. Although certain discovery was complete as of March 17, 2020, the Parties were coordinating and making arrangements to conduct depositions across the country, including in Georgia, Florida, Texas, and Virginia, between March 18, 2020 and March 31, 2020.

3. Due to the coronavirus and COVID-19 pandemic, certain of the Parties and their counsels' law firms imposed travel restrictions on their employees and visitation bans as to non-employees until further notice. As of the date of this Motion, these restrictions and bans are still in place.

4. In addition, the Court also entered several General Orders, postponing and continuing all civil in-person proceedings through June 10, 2020, and extending certain filing deadlines. *See* General Orders 2020-7, 2020-12.

5. By Order dated March 19, 2020, the Court stayed the case for thirty (30) days and vacated all existing deadlines, including trial, pending rescheduling. *See* ECF No. 160. The Parties were directed to submit a status report to the Court with recommendations and a request for a telephonic status conference with the Court on or before April 16, 2010. *See id.*

6. On April 16, 2020, the Parties moved the Court to stay the case for an additional thirty (30) days until May 19, 2020. *See* ECF No. 164.

7. By Order dated April 17, 2020, the Court stayed the case for thirty (30) days and vacated all existing deadlines, including trial, pending rescheduling. *See* ECF No. 165. The Parties were directed to submit a status report to the Court with recommendations and a request for a telephonic status conference with the Court on or before May 19, 2010. *See id.*

8. Since the Court issued the initial stay, the national and statewide COVID-19 situation worsened. On March 19, 2020, there were 13,865 reported cases of COVID-19 in the

United States with 206 reported deaths. As of May 15, 2020, the United States has over 1,400,000 reported cases of COVID-19 with over 87,000 deaths.¹

9. Unsurprisingly, states across the country, including where counsel reside, have taken increasingly stringent measures to limit the spread of the pandemic. This includes Virginia Governor Ralph Northam issuing Executive Order No. 55 on March 30, 2020. This statewide Stay at Home Order “directs all Virginians to stay home except in extremely limited circumstances,” such as seeking medical attention or obtaining goods or services like groceries or prescriptions.² This Stay at Home Order is effective through June 10, 2020, unless rescinded earlier.

10. More recently, Governor Northam issued Executive Order 61, allowing Virginia to enter into Phase One. However, on May 14, 2020, Governor Northam issued Executive Order 62 delaying the City of Richmond and the County of Accomack from entering into Phase One for an additional two weeks.³ Many of the counsel involved in this case reside in or around the City of Richmond.

11. On May 14, 2020, the Parties held a teleconference to discuss the status of this case.

12. In light of the ongoing COVID-19 pandemic, including the Governor of Virginia’s Stay at Home Order, the Parties propose that until a clearer picture exists, the Court stay all litigation deadlines in this case an additional thirty (30) days, to June 18, 2020. In continuation of

¹ United States: Coronavirus Cases, WorldoMeter, <https://www.worldometers.info/coronavirus/country/us/> (last visited May 15, 2020).

² See Governor Northam Issues Statewide Stay at Home Order, Office of the Governor (Mar. 30, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html>.

³ See Executive Order 62, Jurisdictions Temporarily Delayed from Entering Phase One in Executive Order 61 and Permitted to Remain in Phase Zero (May 14, 2020), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-62-and-Order-of-Public-Health-Emergency-Four-AMENDED.pdf>

the practices the Parties have engaged in during the second stay period, the Parties jointly request that they may continue supplementations, conferrals, and motions practice regarding written fact discovery, document discovery, and third-party discovery not requiring in-person activity. The Parties remain available for video and/or telephonic hearings with the Court regarding pending motions, as the Court's schedule permits.

13. The Parties further agree that, on or before June 17, 2020, they will confer and submit a request for a telephonic conference with the Court after June 18, 2020. The Parties further state that they agree to contact the Court shortly regarding a new trial date, with the goal of filing an amended Rule 16(b) scheduling order with the Court during the third stay period.

14. This is a joint request from the Parties and, therefore, extending the stay will not prejudice any Party.

15. This request is submitted in good faith and is not intended to cause unnecessary burden, delay or needless expense.

16. This request is in keeping with the Court's recent orders, including General Order 2020-12, dated April 10, 2020.

17. For the foregoing reasons, the Parties submit good cause exists to stay this case for an additional thirty (30) days, until June 18, 2020, pending rescheduling of all deadlines.

WHEREFORE, Plaintiff CSXT, Defendant NS, and Defendant NPBL, respectfully request that the Court grant this Joint Motion and enter the attached Proposed Order. The Parties attach as **Exhibit 1** an electronically endorsed copy of their Proposed Order.

Dated: May 18, 2020

Respectfully submitted,

CSX TRANSPORTATION, INC.

By Counsel

/s/ Robert W. McFarland

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CERTIFICATE OF SERVICE

I certify that on this 18th day of May, 2020, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system.

/s/ Robert W. McFarland

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